

NEW YORK CITY TAXI AND LIMOUSINE COMMISSION

Notice of Promulgation

Notice is hereby given in accordance with section 1043(b) of the New York City Charter (“Charter”) that the Taxi and Limousine Commission (“TLC”) promulgates amendments to its minimum driver payment rules for high-volume for hire services, including increasing the minimum pay amounts to account for inflation and increased driver expenses, and changing the way utilization rates are calculated and applied.

This rule is promulgated pursuant to sections 1043 and 2303 of the Charter and section 19-503 of the Administrative Code of the City of New York. This rule was published in the City Record on September 6, 2022, for public comment. On October 6, 2022, a public hearing was held virtually by the TLC and the rule was adopted by the Commission on November 15, 2022.

Statement of Basis and Purpose

In response to falling driver earnings, TLC commissioned a study of the economics of New York City’s for-hire vehicle (FHV) industry. Based on the study results,¹ TLC adopted rules in 2018 to require minimum per trip driver pay for trips dispatched by high-volume for-hire services, which currently includes Lyft and Uber.²

Based on TLC, driver, and industry experience with the implementation of the 2018 rules, and following hearings held on May 24, 2022 and October 6, 2022 at which the Commission received written comments and testimony regarding driver pay and utilization rates, TLC is now amending its high-volume driver pay rules. These amendments are based on the testimony and written comments received at the hearings, reviews of driver compensation and passenger fares, analysis of trip data, and changes in inflation as reflected in the Consumer Price Index (CPI) and the transportation costs component of that index, and industry and driver feedback, among other considerations.

Specifically, the Commission amends Sections 59D-03 and 59D-22 of its rules:

- The Utilization Rate definition is amended to clarify that the Utilization Rate is calculated using the time a driver is without a passenger and available to be dispatched.
- Adjustments to the per minute and per mile rates:
 - The per minute rates is adjusted to reflect previous CPI adjustments already adopted and posted on the Commission’s website as well as an additional 7.42% increase to reflect the CPI-W NY-NY-PA metro area percentage change from the 2021 average to September 2022.

¹ June 2018 report: <http://www.centrernyc.org/an-earnings-standard>; updated expense numbers from January 2019: <http://www.centrernyc.org/the-new-york-city-app-based-driver-pay-standard-revised>

² That rule package is available here:

https://www1.nyc.gov/assets/tlc/downloads/pdf/driver_income_rules_12_04_2018.pdf

- The per mile rates is adjusted to reflect the change in the transportation costs component of the CPI-U NY-NJ-PA metro area from the 2018, when driver expenses were last collected for the establishment of the original pay rates, as implemented in February of 2019, and the six-month average of April-September of 2022. The transportation costs component of the CPI over this time increased 23.93%.
- For a 30-minute, 7.5-mile trip in a standard vehicle, these new rates require drivers to be paid a minimum of \$27.15, up more than \$4.00 from the original rates and up more than \$2.50 from the current rates.
- Changes to the way utilization rates are calculated and considered:
 - The Utilization Rate for the prior calendar year for each High-Volume For-Hire Service is assessed every January.
 - The Initial Utilization Rate is 58% for each High-Volume For-Hire Service unless a High-Volume For-Hire Service’s average Utilization Rate for a calendar year decreases below 52% or increases above 64%.
 - Specifying that “multi-apping” time—time a driver is without a passenger and available to be dispatched on multiple high-volume for-hire services—is evenly divided between companies.
 - Repealing Daily Average Trip Volumes assessment as it is no longer necessary.
- Additional changes including:
 - Clarifying that future CPI adjustments will use only the positive percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers for the NY-NJ-PA metro area instead of 12-month Percentage Change, with the exception of the next two CPI adjustments, which in January of 2023 will compare December 2022 with September of 2022, and in January of 2024 will compare the annual average for 2023 with December of 2022.
 - Repealing the shared ride bonus, which was never specified or implemented.
 - Repealing the evaluation of the rates by the Commission as it is no longer necessary in view of the annual CPI adjustments.

The Commission’s authority to promulgate this rule is found in sections 2303 of the New York City Charter and section 19-503 of the New York City Administrative Code. The rules that the Commission amends are contained within Subchapter 59D of Chapter 59 of Title 35 of the Rules of the City of New York.

New material is underlined.

[Deleted material is in brackets.]

Section 1. Subdivision (k) of section 59D-03 of Subchapter 59D of Chapter 59 of Title 35 of the Rules of the City of New York is amended to read as follows:

(k) **Utilization Rate** refers to the percentage of time that Drivers who have made themselves available to accept dispatches from a High-Volume For-Hire Service spend transporting passengers on trips dispatched by the High-Volume For-Hire Service. A High-Volume For-Hire Service's Utilization Rate is calculated by dividing the total amount of time those Drivers spend transporting passengers on trips dispatched by the High-Volume For-Hire Service by the total amount of time Drivers are available to accept dispatches from the High-Volume For-Hire

Service, have been dispatched by the High-Volume For-Hire Service to pick up a passenger but do not have a passenger in the vehicle, and are transporting passengers on trips dispatched by the High-Volume For-Hire Service.

§ 2. Subdivision (a) of section 59D-22 of Subchapter 59D of Chapter 59 of Title 35 of the Rules of the City of New York is amended to read as follows:

- (a) A High-Volume For-Hire Service must pay Drivers, at a minimum, the following amounts for each trip dispatched by the Base:
- (1) [January 1, 2019] For each mile a Driver transports a Passenger in the City on a trip dispatched by the High-Volume For-Hire Service, the High-Volume For-Hire Service must pay the Driver no less than [\$0.631] \$0.782 per mile for a trip dispatched to a Vehicle that is not an Accessible Vehicle and [\$0.818] \$1.014 for a trip dispatched to an Accessible Vehicle, divided by the High-Volume For-Hire Service's Utilization Rate, and for trips that begin in the City but end outside of the City, the Base must pay the Driver no less than [\$1.262] \$1.564 per mile for a trip dispatched to a vehicle that is not an Accessible Vehicle and no less than [\$1.636] \$2.027 per mile for a trip dispatched to an Accessible Vehicle for each mile a Driver transports a Passenger outside of the City;

[(i) Reserved – expense formulation for luxury vehicles]
 - (2) *Per Minute Rate.* [Beginning January 1, 2019] For each minute a Driver transports a Passenger in the City on a trip dispatched by the High-Volume For-Hire Service, the High-Volume For-Hire Service must pay the Driver no less than [\$0.287] \$0.329 per minute, divided by the High-Volume For-Hire Service's Utilization Rate, and for each minute a Driver transports a Passenger outside of the City on a trip dispatched by the High-Volume For-Hire Service that began in the City and ended outside of the City, the High-Volume For-Hire Service must pay the Driver no less than [\$0.574] \$0.659 per minute[, and].
 - (3) [*Shared Ride Bonus.* For each separate pick up on a trip where a Passenger shares the Vehicle for part or all of the trip with a Passenger from a separately dispatched call, the High-Volume For-Hire Service must pay the Driver the Shared Ride Bonus, in addition to the per mile and per minute rates.] [Reserved.]
 - (4) Consumer Price Index Adjustments. Beginning [January 1, 2020] March 1, 2025 and continuing each calendar year thereafter, the dollar amounts in the per mile rates and per minute rates contained in this subdivision will be adjusted using only the [12-month Percentage Change] positive percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers for the NY-NJ-PA metro area, comparing the annual average for previous calendar year to the annual average for the year before the previous calendar year. The Consumer Price Index adjusted per mile and per minute rates will be posted on the Commission's website. Such new rates shall be effective March 1 of each year.

(i) The rates effective March 1, 2023 will be the rates adjusted according to the percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers for the NY-NJ-PA metro area from September of 2022 to December of 2022. The rates effective March 1, 2024 will be the rates adjusted according to the percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers for the NY-NJ-PA metro area from December 2022 to the annual average for 2023.

(5) *Hourly Payments.* If a High-Volume For-Hire Service subject to this section pays drivers on an hourly basis, the payment the Driver receives for each hour the Driver accepts dispatches from the High-Volume For-Hire Service must be at least the sum of the Per Mile Rate for all miles the Driver transported Passengers during the hour[,] and the Per Minute Rate for all minutes the Driver spent transporting Passengers during the hour[, and the Shared Ride Bonus for each applicable pick up performed during the hour].

§59D-22(a)	Fine: \$500 per instance of under payment. In addition to the penalty payable to the Commission, the Hearing Officer must order the High-Volume For-Hire Service to pay restitution to the Driver, equal to the amount not paid to the Driver in violation of this rule.	Appearance REQUIRED
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§ 3. Subdivision (b) of section 59D-22 of Subchapter 59D of Chapter 59 of Title 35 of the Rules of the City of New York is amended to read as follows:

(b) *Utilization Rate:* The Commission will assess, and post on its website, the Utilization Rate for the prior calendar year for each High-Volume For-Hire Service subject to this section every [six months] January.

(1) *Initial Utilization Rate.* [Prior to the Commission assessing and posting on its website the Utilization Rate for each High-Volume For-Hire Service and notifying each High-Volume For-Hire Service of such High-Volume For-Hire Service’s Utilization Rate, the Utilization Rate for all High-Volume For-Hire Services will be the aggregate Utilization Rate of all High-Volume For-Hire Services, as calculated by the Commission. A High-Volume For-Hire Service may petition the Commission to calculate a Utilization Rate specific to that High-Volume For-Hire Service prior to the expiration of the Initial Utilization Rate period, but in no event will a High-Volume For-Hire Service have a Utilization Rate lower than the aggregate Utilization Rate of all High-Volume For-Hire Services for the Initial Utilization Rate period.] The Commission will maintain the Initial Utilization Rate of 58% for each High-Volume For-Hire Service unless a High-Volume For-Hire Service’s average Utilization Rate for a calendar year decreases below 52% or increases above 64%, in which case the High-Volume For-Hire Service’s pay rate from February 1 to the following January 31 will be based on that Utilization Rate, not the Initial Utilization Rate of 58%, until the next reassessment. Such reassessments will occur each January. When a High-Volume For-Hire Service Driver is without a passenger and available for dispatch on more than one High-Volume For-Hire Services application, such time will be

divided evenly between each High-Volume For-Hire Service for which the Driver was available for dispatch.

§ 4. Subdivisions (c) and (d) of section 59D-22 of Subchapter 59D of Chapter 59 of Title 35 of the Rules of the City of New York, relating to daily average trip volume assessments and review of expenses, earnings and service levels in the high volume for-hire vehicle sector, are REPEALED.